

## Agency 17

# Office of the State Bank Commissioner

### *Articles*

- 17-1. DEFINITIONS.
- 17-2 to 17-7. RESERVED.
- 17-8. FINANCIAL MODERNIZATION.
- 17-9. INVESTMENT SECURITIES.
- 17-10. RESERVES.
- 17-11. DOCUMENTATION REQUIREMENTS.
- 17-12. TRANSACTIONS.
- 17-13. RESERVED.
- 17-14. DEPOSIT OF PUBLIC FUNDS; REVENUE BOND APPROVAL.
- 17-15. RECORDS.
- 17-16. CHARTER APPLICATIONS.
- 17-17. FINANCIAL FUTURES CONTRACTS.
- 17-18. OPEN-END INVESTMENT COMPANIES.
- 17-19. BANK SUBSIDIARIES ENGAGED IN SECURITIES ACTIVITIES.
- 17-20. EMPLOYMENT.
- 17-21. BANK HOLDING COMPANIES; APPLICATION FOR THE ACQUISITION OF A KANSAS BANK OR BANK HOLDING COMPANY.
- 17-22. APPLICATION FEES.
- 17-23. TRUST SUPERVISION.
- 17-24. MORTGAGE BUSINESS.
- 17-25. CREDIT SERVICES ORGANIZATIONS

### **Article 1.—DEFINITIONS**

**17-1-1. Definitions.** As used in article 1 through article 23 of these regulations, “commissioner” means the Kansas state bank commissioner. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-701; effective Aug. 9, 1996.)

### **Articles 2 to 7.—RESERVED**

### **Article 8.—FINANCIAL MODERNIZATION**

**17-8-1. Financial subsidiaries.** (a) Before acquiring an interest in a financial subsidiary pursuant to K.S.A. 9-1101(29), and amendments thereto, or engaging in a new activity in an existing financial subsidiary of the bank, the bank shall

provide a written notice to the commissioner that contains the following information:

(1) If acquiring an interest in a financial subsidiary, a description of the transactions through which the bank proposes to acquire control of, or an interest in, the financial subsidiary, and the percentage of ownership proposed;

(2) the name and main office address of the financial subsidiary;

(3) a description of the current and proposed activities of the financial subsidiary; and

(4) if the proposal relates to an initial affiliation with a company engaged in insurance activities, a description of the type of insurance activities that the company is engaged in or plans to conduct, the name of each state where the company holds an insurance license, and the name of the state insurance regulatory authority that issued the license.

(b) A notice filed with the commissioner shall be deemed approved on the 15th calendar day after receipt of a complete notice unless before that time the commissioner notifies the bank of any of the following:

(1) The acquisition of the interest in the financial subsidiary or the proposed new activity in an existing financial subsidiary is approved.

(2) The notice will require additional review.

(3) The bank is not approved to acquire the interest in the financial subsidiary or to engage in the proposed new activity in an existing financial subsidiary.

(c) The aggregate consolidated total assets of all financial subsidiaries of a bank shall not exceed 45 percent of the consolidated total assets of the parent bank.

(d) If the commissioner finds that any financial subsidiary is being operated in either an illegal or an unsafe and unsound manner, the bank may be ordered by the commissioner to take appropriate remedial action or to divest itself of its interest in the financial subsidiary. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1101; effective Oct. 3, 2003.)

## Article 9.—INVESTMENT SECURITIES

**17-9-1. Investment securities; definitions.** For the purposes of K.S.A. 1995 Supp. 9-1101(6) and this article:

(a) “investment security” means an investment made for the account of the bank which is a marketable obligation evidencing indebtedness in the form of a bond, note, or debenture, commonly known as an investment security. The term shall not include, and nothing in this article shall be construed as permitting a bank to purchase, investments which are predominantly speculative in nature or which are in default as to principal and interest; and

(b) “marketable obligation” means an investment that:

(1) may be sold with reasonable promptness at a readily determinable price which corresponds reasonably to its fair value; and

(2) is supported by adequate evidence that the obligor will be able to perform all obligations in connection with the security including the ability to meet all debt service requirements. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

### **17-9-2. Investment securities; limita-**

**tion.** The percentage limitations contained in K.S.A. 1995 Supp. 9-1101(6) shall be determined on the basis of the par or face value, or cost of the security, whichever is less, and not on the market value. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

**17-9-3. Investment securities; ledger and records.** (a) The bank shall maintain a central listing showing the following for each investment security:

- (1) par value;
- (2) cost;
- (3) interest rate;
- (4) purchase and maturity dates; and
- (5) name of the issuer.

(b) The bank shall retain the following additional information for each investment security:

(1) all credit information and risk documentation necessary to show compliance with K.A.R. 17-9-1; and

(2) original invoices of any sales and purchases. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

**17-9-4. Investment securities; amortization of premium.** A bank shall not purchase an investment security for its own account at a price exceeding par unless the bank provides for the regular amortization of the premium paid in accordance with generally accepted accounting principles (GAAP). (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

**17-9-5. Investment securities; conversion.** (a) The purchase of investment securities convertible into stock at the option of the issuer shall be prohibited.

(b) A bank may purchase investment securities convertible into stock at the option of the holder or with stock purchase warrants attached if it is apparent that the price paid for an otherwise eligible security fairly reflects the investment value of the security itself and does not include any speculative value based upon the presence of a stock purchase warrant or conversion option. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

**17-9-6. Investment securities; acquisition through debt previously contracted.** The restrictions and limitations contained in article 9

of these regulations shall not apply to investment securities acquired:

- (a) through foreclosure on collateral;
- (b) in good faith by way of compromise of a doubtful claim; or
- (c) to avoid loss in connection with a debt previously contracted. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

**17-9-7. Investment securities; repurchase.** (a) Subject to the limitation in subsection (b) of this regulation, a bank may purchase and sell investment securities under a repurchase agreement if one or more of the following provisions is part of the repurchase agreement:

(1) the bank has the option or right to require the seller of the securities to repurchase them from the bank at a price stated in the agreement, or at a price subject to determination under the terms of the agreement, but in no case less than the value at the time of the repurchase;

(2) the seller or the seller's nominee reserves the right or the option to repurchase the securities for a price stated or at a price subject to determination under the terms of the agreement, but in no case shall the option be for an amount less than the value at the time of the initial purchase;

(3) the bank selling securities has an option or right to repurchase the securities from the buyer at a price stated or at a price subject to determination under the terms of the agreement; or

(4) the seller or a third party guarantees the bank against loss on resale of the securities.

(b) The total amount that any bank has committed to repurchase at any one time from the state of Kansas or its political subdivisions shall not exceed a sum equal to 10 times the bank's capital and surplus. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and K.S.A. 9-1131; effective Aug. 9, 1996.)

**17-9-8. Investment securities; trustees.** Where the investment security is issued under a trust agreement, the agreement shall provide for a trustee independent of the obligor. The trustee shall be a bank or trust company. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

**17-9-9. Investment securities; no transaction as principal.** Except with the prior approval of the commissioner, a bank shall not participate as a principal in the marketing of

investment securities. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

**17-9-10. Investment securities; requests for rulings.** (a) Any bank may request a determination by the commissioner whether a security which the bank holds or desires to purchase for its own account qualifies as an investment security.

(b) Any request shall be accompanied by information sufficient to enable the commissioner to make a determination. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective Aug. 9, 1996.)

## Article 10.—RESERVES

**17-10-1.** (Authorized by K.S.A. 9-1001; K.S.A. 1969 Supp. 9-1713; effective Jan. 1, 1970; revoked Aug. 9, 1996.)

## Article 11.—DOCUMENTATION REQUIREMENTS

**17-11-1 to 17-11-8.** (Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)

**17-11-9.** (Authorized by K.S.A. 9-1713 and implementing K.S.A. 9-1101 and 9-1131; effective Jan. 1, 1966; amended May 1, 1978; amended, T-84-14, July 1, 1983; amended May 1, 1984; revoked Aug. 9, 1996.)

**17-11-10 to 17-11-12.** (Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)

**17-11-13. Stockholders' meetings.** Minutes shall be made of each stockholders' meeting of a bank or trust company. The minutes shall show any action taken by the stockholders, including the election of all directors. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1114; effective Jan. 1, 1966; amended Aug. 9, 1996.)

**17-11-14. Directors' meetings.** (a) Minutes shall be made of each directors' meeting of a bank or trust company. The minutes shall show any action taken by the directors.

(b) In addition to any other actions the board may take, the following specific actions shall be taken by the board of directors and noted in the minutes:

(1) Election of all officers, showing their titles, salaries, and bonuses, if any;

(2) approval of all loans, including overdrafts. The board may establish a committee with authority to approve loans. The board shall approve a report from the committee summarizing all loans made since the board's last meeting;

(3) review and approval of the directors' examination or audit required under K.S.A. 9-1116, and amendments thereto;

(4) annual approval of all bank policies;

(5) review of all state and federal regulatory examination reports received since the board's last meeting;

(6) annual approval of fidelity bond and bank casualty insurance;

(7) approval of bank income and expenses and securities transactions;

(8) review and ratification of any committee reports; and

(9) approval of dividends and a review that the dividends are in compliance with K.S.A. 9-910, and amendments thereto. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-911, K.S.A. 2000 Supp. 9-1114, K.S.A. 2000 Supp. 9-1115, and K.S.A. 9-1116; effective Jan. 1, 1966; amended Sept. 20, 1996; amended Jan. 18, 2002.)

**17-11-15. Loans; records.** Each bank or trust company shall maintain a central listing which shows the following:

(a) the indebtedness of each borrower;

(b) the note number;

(c) the origination date of the loan;

(d) the amount; and

(e) the maturity date. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Aug. 9, 1996.)

**17-11-16. Bonds; records.** (a) Each bank or trust company shall maintain a central listing showing the following for each bond:

(1) par value;

(2) cost;

(3) interest rate;

(4) purchase date;

(5) maturity date; and

(6) name of the issuer.

(b) In addition, each bank or trust company shall maintain and keep on file for each bond:

(1) all credit information and risk documentation;

(2) original invoices of sales and purchases; and

(3) descriptive circulars or other descriptive material, giving complete information as to the

bond issue. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Aug. 9, 1996.)

**17-11-17. Bank-owned real estate; records.** (a) Each bank or trust company shall maintain the following records for real estate owned by the bank or trust company:

(1) the insurance coverage on the real estate, including the amount of insurance and the expiration date;

(2) the legal description of the property;

(3) the cost of alterations; and

(4) proof of the payment of real estate taxes.

(b) In addition to the above requirements, the bank shall maintain the following records for bank-owned real estate obtained through foreclosure or debt settlement:

(1) the name of the original debtor;

(2) the total amount of indebtedness for which the real estate was acquired;

(3) the cost of acquisition; and

(4) the fair market value supported by an accurate appraisal performed not later than 90 days following the date of acquisition of the property. Thereafter, the fair market value shall be supported by an annual appraisal or appraisal update.

(A) Any appraisal required by subsection (b)(4) may be performed by any of the following:

(i) a certified or licensed appraiser;

(ii) two officers or directors of the bank; or

(iii) some other qualified individual.

(B) As used in subsection (b)(4), "appraisal update" shall mean a review of the property and the existing appraisal to determine the current fair market value and to make adjustments to the bank's valuation of the property if necessary. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1102; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)

**17-11-18. Loans; documentation requirements.** (a) Complete and current credit information, not older than 15 months, shall be maintained by the bank or trust company for any loan in excess of \$25,000 unless the loan is adequately secured.

(b) Title security. Unless loan repayment is guaranteed by a governmental program or private insurance company, the following requirements shall be met:

(1) For each real estate loan in excess of \$25,000 but less than \$50,000, the bank or trust

company shall complete one of the following tasks.

(A) The bank or trust company shall verify in writing that a lien search of the records of the county register of deed's office was conducted and the bank's or trust company's lien position was determined. This verification of a lien search shall be on file with the bank or trust company.

(B) The bank or trust company shall obtain an attorney's opinion or title insurance policy, and shall maintain the policy on file.

(C) For a non-purchase money mortgage that is not a refinancing of an existing first mortgage, the bank or trust company shall obtain an insurance policy fully insuring the bank or trust company against loss of the mortgage priority position. The bank or trust company shall maintain a copy of the policy and any other supporting information on file.

(2) For each real estate loan of \$50,000 or more, an attorney's opinion or a title insurance policy shall be on file with the bank or trust company.

(c) If the value of the improvements on any real estate is necessary for adequate protection of the loan, an insurance policy covering these improvements against fire and windstorm shall be on file with the bank for any loan in excess of \$25,000.

(d) A real estate mortgage or deed of trust, showing the filing information with the county register of deeds, shall be on file for each loan collateralized by real estate.

(e) For any loan collateralized by personal property, if the bank is required by law to file a financing statement to perfect a security interest, the bank or trust company shall retain a copy of the filed financing statement. In other cases, relevant documents shall be maintained. (Authorized by and implementing K.S.A. 9-1713, as amended by 2003 HB 2224, § 2; effective Jan. 1, 1966; amended May 1, 1983; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002; amended May 30, 2003.)

**17-11-19. Charged-off assets; records.**

(a) Each bank or trust company shall maintain a central listing of any assets charged off the books of the bank or trust company. The central listing shall include a subsidiary ledger for each debtor, showing the date of charge-off, the description of the asset, the amount charged off, and any recoveries.

(b) The bank or trust company shall retain the

central listing for 10 years after the last payment is received, or 10 years after the date of the charge-off if no payments have been received. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1101, as amended by L. 2001, ch. 87, §5, and 9-2103, as amended by L. 2001, ch. 27, §1; effective Jan. 1, 1966; amended Aug. 9, 1996; amended Jan. 18, 2002.)

**17-11-20.** (Authorized by K.S.A. 9-1101, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; revoked Aug. 9, 1996.)

**17-11-21. Appraisals and evaluations.**

(a) Except for those transactions that meet the requirements of subsection (b) or (c) of this regulation, an accurate appraisal of all real estate mortgaged securing principal debt of \$25,000 or more to a bank or trust company shall be made by an appraiser who is licensed or certified by the state in which the property is located and who is independent of the transaction.

(b) Two officers or directors, or a qualified individual who is independent of the bank or trust company and independent of the transaction, may complete an accurate evaluation of real estate mortgaged in the following types of real estate-related transactions:

(1) Real estate mortgaged securing principal debt of \$250,000 or less;

(2) business loans of \$1 million or less secured by real estate, if the primary source of repayment is not dependent upon the sale of, or rental income from, the real estate; or

(3) renewals or refinancing of loans, in any amount, secured by real estate, if either of the following conditions is met:

(A) There is no advancement of new monies other than funds necessary to cover reasonable closing costs; or

(B) there has been no obvious and material change in market conditions or physical aspects of the property that affects the adequacy of the real estate collateral or the validity of an existing appraisal, even with the advancement of new monies.

(c) Neither an appraisal nor an evaluation shall be required for the following types of real estate-related transactions:

(1) Loans that are well supported by income or other collateral if real estate is taken as additional collateral solely in an abundance of caution;

(2) loans to acquire or invest in real estate if a security interest is not taken in real estate;



(3) liens taken on real estate to protect rights to, or control over, collateral other than real estate;

(4) real estate operating leases that are not the equivalent of a purchase or sale; or

(5) real estate-related loans that have met all appraisal requirements necessary to be sold to, or insured by, a federal government, or government-sponsored, agency.

(d) The individual or individuals who conduct an appraisal or evaluation shall view the premises, make a written statement of value, and sign and file the statement with the bank or trust company. The land and improvements shall be appraised separately.

(e) Notwithstanding any other provisions of this regulation, an appraisal or evaluation may be required by the commissioner if it is deemed necessary to address safety and soundness concerns. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1101, as amended by L. 2001, ch. 87, §5, and 9-2103, as amended by L. 2001, ch. 27, §1; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Oct. 19, 1992; amended Jan. 25, 1993; amended Sept. 20, 1993; amended Sept. 19, 1994; amended Aug. 9, 1996; amended Jan. 18, 2002.)

**17-11-22. Insurance on Bank Property.** The insurable tangible property of a bank or trust company shall be insured for at least seventy per cent of its actual value against loss from fire, wind-storm and tornado. (Authorized by L. 1965, ch. 81; compiled January 1, 1966.)

**17-11-23. Other assets; records.** Each bank or trust company shall maintain a central listing showing the following on any personal property taken in payment of a debt:

- (a) a complete description of the property;
- (b) the date of acquisition;
- (c) the name of the original debtor;
- (d) the total amount of indebtedness for which the personal property was acquired; and
- (e) the cost of acquisition. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1112 and 9-2103; effective Aug. 9, 1996.)

## Article 12.—TRANSACTIONS

**17-12-1. Daily transactions.** (a) Each transaction affecting the assets, liabilities, or fiduciary assets held by the bank or trust company shall be shown in detail.

(b) The books and records shall be designed to allow the tracing of any transaction from origin to final entry.

(c) Books and records shall be posted daily covering all transactions for the preceding day, except for the final entries which are made at some other regular stated interval. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended Jan. 27, 1992; amended Aug. 9, 1996.)

**17-12-2. Daily statement.** A summary of all transactions showing the assets, liabilities and net worth of the bank or trust company shall be prepared daily for each bookkeeping day and kept on file at the bank or trust company. Additionally, a summary of all transactions relating to fiduciary assets shall be prepared at least monthly and kept on file at the bank or trust company. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101 and 9-2103; effective Jan. 1, 1966; amended May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)

## Article 13.—RESERVED

## Article 14.—DEPOSIT OF PUBLIC FUNDS; REVENUE BOND APPROVAL

**17-14-1. Revenue bonds; approval.** The commissioner may approve, as security for the deposit of public funds pursuant to K.S.A. 9-1402, revenue bonds of any municipal corporation or quasi-municipal corporation, except for bonds issued under K.S.A. 12-1740 to 12-1749 and bonds secured by revenues of a utility which has been in operation for less than three years. Revenue bonds may be approved subject to the following conditions:

(a) Such bonds shall be issued pursuant to the laws of Kansas, and the commissioner shall be furnished a copy of the approving legal opinion of a recognized bond attorney.

(b) The rates, fees or charges fixed for the use of services rendered by a utility (as defined by K.S.A. 10-1201) shall be sufficient to:

- (1) pay the cost of operation, improvement, and maintenance of the utility;
- (2) provide an adequate depreciation fund; and
- (3) pay the principal of and interest upon the bonds when due.

(c) Such bonds shall have a debt service coverage for the term of the issue of at least 140%,

except that debt service may go as low as 125% in a future year or years, provided:

(1) There is a rate covenant in the ordinance stating that rates, fees and charges shall be raised if necessary to have at least 125% debt service coverage; or

(2) The issue has a rating of A or better in a nationally recognized rating publication.

(d) The municipality shall forward a certified statement of the annual audit required by K.S.A. 10-1208 to the State Bank Commissioner within thirty (30) days of completion, of the same.

(e) The auditor or certifying officer shall make a certified statement that they shall notify the State Bank Commissioner within thirty (30) days of the completion of the audit in any year the coverage of the annual debt service falls below 140% and shall explain what steps have been taken to correct the deficiency.

(f) The municipality shall submit a certified copy of the minutes of the meeting of the local governing body that approved the authority to issue the bond resolution, and shall also submit a certified copy of the Bond Resolution. (Authorized by K.S.A. 9-1402, K.S.A. 1965 Supp. 9-1713; effective Jan. 1, 1966; amended Jan. 27, 1992.)

## Article 15.—RECORDS

### 17-15-1. Records; retention period.

Each bank or trust company shall retain the following records for the periods indicated:

| <i>TYPE OF RECORD</i>   | <i>RETENTION<br/>RECORD</i> |
|---|-----------------------------|
| <b>ADMINISTRATIVE</b>   |                             |
| Attachments and/or garnishments .....   | 2 years after close         |
| NOTE: Legal documents and copies of returns and correspondence should be filed after case closed with general correspondence. |                             |
| Bank examiner's reports .....   | 5 years                     |
| NOTE: These are the property of the supervisory authorities, whose approval should be obtained prior to destruction.          |                             |
| Charged-off asset records .....   | Permanent                   |
| Court case records (foreclosed real estate, etc.) .....   | 2 years after close         |
| <b>Insurance records</b>  |                             |
| (a) Schedules of fire and other insurance, also records of premium payments and of amounts recovered. ....                    | 3 years                     |
| (b) Casualty liability policies expired—P.L. & P.D., O.L. & T., etc. ....   | 2 years                     |
| (c) Windstorm, fire, theft, etc., policies expired .....  | 2 years                     |
| (d) Bankers Blanket Bonds .....   | 6 years                     |

| <i>TYPE OF RECORD</i>  | <i>RETENTION<br/>RECORD</i>       |
|--|-----------------------------------|
| Minute books of meetings (stockholders, directors, committees, etc.) .....   | Permanent                         |
| <b>ACCOUNTING AND AUDITING</b>   |                                   |
| Accrual and bond amortization records ..   | 1 year                            |
| Audit reports .....  | 3 years                           |
| Audit work papers .....  | 3 years                           |
| Bank Call Reports .....  | 5 years                           |
| Budget work sheets .....   | Optional                          |
| Consolidated financial statements .....  | 5 years                           |
| Daily reserve computation .....  | 1 year                            |
| Difference record .....  | 2 years                           |
| Income and dividend report .....   | 5 years                           |
| Reconcilements of bank (due to) deposits   | 1 year                            |
| Reconcilements register (due from) .....   | 1 year                            |
| Reports to directors .....   | 5 years                           |
| Reports to executive committee .....   | 5 years                           |
| Securities vault "in and out" tickets .....  | 1 year                            |
| Tax records .....  | 7 years                           |
| NOTE: Copies of schedules and returns to taxing authorities for tax purposes, notices of assessment by taxing authorities and documentary proceedings in appeal therefrom. |                                   |
| <b>CAPITAL</b>   |                                   |
| Capital stock certificates, records of, or stubs of .....  | Permanent                         |
| Capital stock ledger .....   | Permanent                         |
| Dividend checks .....  | 5 years after paid                |
| Dividend register .....  | 5 years after all checks are paid |
| Proxies .....  | 3 years                           |
| Receipts for stock certificates .....  | Permanent                         |
| NOTE: Where bank secures a receipt it is recommended that it be affixed to stub of certificate book.   |                                   |
| <b>CERTIFICATES OF DEPOSIT</b>   |                                   |
| Certificates .....   | 5 years after paid                |
| Ledger cards .....   | 2 years after close               |
| Register .....   | 2 years                           |
| <b>CHECKING ACCOUNTS—INDIVIDUALS AND FIRMS</b>   |                                   |
| <b>Account Analysis</b>  |                                   |
| Analysis work sheets or cards .....  | 1 year                            |
| Average balance cards .....  | Optional                          |
| Interest computation records .....   | Optional                          |
| Service charge records .....   | Optional                          |
| Bookkeepers' daily lists of checks charged in total (short lists) .....  | 1 year                            |
| Check book orders .....  | Optional                          |
| Checks paid (Microfilm copy-front and back) .....  | 5 years                           |
| Copies of advices of deposit .....   | 1 year                            |
| Daily report of overdrafts .....   | Optional                          |
| Deposit tickets .....  | 5 years                           |
| NOTE: Return with statement after microfilm  |                                   |
| Individual ledgers .....   | 5 years after last entry          |
| Individual ledger journals .....   | 1 year                            |

## OFFICE OF THE STATE BANK COMMISSIONER

672



| <i>TYPE OF RECORD</i>   | <i>RETENTION RECORD</i> | <i>TYPE OF RECORD</i>  | <i>RETENTION RECORD</i>   |
|---|-------------------------|--|---------------------------|
| Undelivered statements and cancelled checks .....   | 5 years                 | Expense vouchers or invoices .....   | 6 years                   |
| <b>GENERAL</b>  |                         | Money orders, bank or personal .....   | 5 years                   |
| Applications for travelers checks .....   | 1 year                  | Money order registers .....  | 2 years                   |
| Central file cards .....  | Optional                | Receipts for certified checks .....  | 5 years after date        |
| Change-of-address orders .....  | Optional                | Requisitions   |                           |
| Check book orders .....   | Optional                | (a) If all information including name of purchase is recorded on register ...  | Optional                  |
| Code books (not returned) .....   | Destroy                 | (b) If no detail is transcribed on register .....  | 5 years                   |
| General correspondence .....  | 3 years                 | <b>PERSONNEL</b>   |                           |
| Incoming mail envelopes .....   | Optional                | Attendance record .....  | 3 years                   |
| Paid bills, statements and invoices .....   | 5 years                 | Records of employees:  |                           |
| Protest notices .....   | 1 year                  | Application for employment, reference records, reports and certificates of examination, service records, efficiency tests and other similar data ..... | 6 years after termination |
| Receipts for check books .....  | Optional                | Application of those not employed ....   | 6 years                   |
| Requisition for supplies .....  | Optional                | Salary ledger .....  | 3 years                   |
| Stenographers notebooks and mechanical device records; extra copies of letters if other copies are retained ..... | Optional                | Salary receipts .....  | 3 years                   |
| Telegram, cable and radiogram copies ...  | 3 years                 | NOTE: Retain final receipt in personnel folder.  |                           |
| Vault records, openings and closings ....   | 1 year                  | <b>PROOF, CLEARINGS AND TRANSIT</b>  |                           |
| Wire transfer debit and credit entries ....   | 1 year                  | Clearinghouse settlements sheets .....   | 3 months                  |
| <b>GENERAL LEDGER</b>   |                         | Copies of advices of corrections .....   | 6 months                  |
| Daily statement of condition .....  | Permanent               | Department or tellers' proof sheets .....  | 6 months                  |
| General journal   |                         | Deposit proof sheets or tapes .....  | 1 year                    |
| (a) If the journal is a byproduct of posting the general ledger .....   | 1 month                 | Inclearings envelopes, proof sheets or tapes .....   | 1 year                    |
| (b) If the journal is used as book of original entry, with descriptions ...                                       | 5 years                 | Microfilm .....  | 2 years                   |
| General ledger sheets .....   | Permanent               | Outclearings proof sheets or tapes .....   | 6 months                  |
| General ledger tickets (debits and credits)   | 5 years                 | Outgoing cash letters, transit .....   | 6 months                  |
| <b>INTERNATIONAL DEPARTMENT</b>   |                         | Proof sheets, transit .....  | 6 months                  |
| Cable copies .....  | 5 years                 | <b>REAL ESTATE LOANS</b>   |                           |
| Cable requisitions .....  | 5 years                 | Journal (debits and credits) .....   | 2 years                   |
| Foreign collection register .....   | 5 years                 | Ledger cards .....   | 5 years                   |
| Foreign draft applications .....  | 5 years                 | Loan credit files .....  | 5 years after close       |
| Foreign exchange remittance sheets or books .....   | 5 years after issue     | Mortgage credits .....   | 1 year                    |
| Foreign mail transfer applications .....  | 5 years                 | Remittances .....  | 1 year                    |
| Foreign mail transfer carbons .....   | 5 years                 | Tellers' blotter .....   | 2 years                   |
| Letter of credit applications .....   | 5 years                 | <b>REGISTERED MAIL</b>   |                           |
| Letter of credit ledger sheets .....  | 5 years                 | Marine insurance books .....   | 3 years                   |
| Travelers check applications .....  | 2 years                 | Registered mail (incoming) record .....  | 3 years                   |
| Travelers check register .....  | 2 years                 | Registered mail (outgoing) record .....  | 3 years                   |
| <b>INVESTMENTS</b>  |                         | Return receipt cards .....   | 3 years                   |
| Bond ledger sheets .....  | 5 years                 | <b>SAFE DEPOSIT VAULT</b>  |                           |
| Brokers' confirmations .....  | 2 years                 | Access tickets .....   | 2 years                   |
| Brokers' invoices .....   | 2 years                 | Cancelled signature cards .....  | 2 years after close       |
| Brokers' statements .....   | 3 years                 | Copies of rent receipts .....  | 2 years                   |
| Descriptive literature on securities disposed of .....  | 2 years                 | Correspondence .....   | 2 years after close       |
| <b>OFFICIAL CHECKS AND DRAFTS</b>   |                         | Leases or contracts, close accounts .....  | 2 years after close       |
| Carbon copy official check register .....   | 1 month after paid      | Ledger record of account .....   | Optional                  |
| Cashier checks .....  | 5 years after paid      | <b>SAVINGS ACCOUNTS</b>  |                           |
| Certified checks or receipts .....  | 5 years after paid      | Withdrawals .....  | 5 years                   |
| NOTE: If not delivered or returned to depositor, photograph and destroy checks and then retain film.              |                         | Deposits .....   | 5 years                   |
| Certified check register .....  | 5 years                 | Journal .....  | 1 year                    |
| Drafts (cancelled) .....  | 5 years after paid      | Ledger cards or sheets .....   | 5 years after last entry  |
| Expense checks (cancelled) .....  | 3 years after paid      |  |                           |

**17-15-1****OFFICE OF THE STATE BANK COMMISSIONER**

| <i>TYPE OF RECORD</i>  | <i>RETENTION RECORD</i>  | <i>TYPE OF RECORD</i>  | <i>RETENTION RECORD</i>   |
|--|--|--|---|
| Window bookkeeping machine control tapes .....   | 1 year   | Listing for Form 1099 .....  | 1 year after filing   |
| Pass books .....   | Destroy  | Minute books, trust committee and trust investment committee .....   | Permanent   |
| Reports of accounts, opened and closed .....   | Optional   | Original trust entries (daily debits and credits and multiple forms) .....                                 | 2 years   |
| Resolutions .....  | 5 years after close  | Paid invoices: tradesman, professional (excluding attorney) and miscellaneous .....                        | 3 years   |
| Signature cards .....  | 5 years after close  | NOTE: In probate accounts retain three years after expiration of time of appeal from order closing account |   |
| Trial balances, nonautomated .....   | Optional   | Probate slips .....  | Destroy original when account is closed. Destroy duplicate after circulation. |
| Trial balances, automated  |  |  |   |
| (a) If statement or account history record retained .....  | Optional   |  |   |
| (b) If no alternative record .....   | 5 years  |  |   |
| Withdrawal affidavits .....  | 3 years  |  |   |
| <b>TELLERS</b>   |  |  |   |
| Cash item record .....   | 1 year   | Registered mail report .....   | 3 years   |
| Return item register .....   | 1 year   | Registration journals .....  | Until closed  |
| Tellers' cash books .....  | Optional   | Rent collection, mortgage and land contract collection (file accountant's copy) .....                      | 5 years   |
| Tellers' cash tickets, originals and carbon copies .....   | 1 month  | Signature files .....  | Until closed  |
| Tellers' recapitulation .....  | 1 month  | Stock transfer change-of-address authority .....   | 1 year  |
| Tellers' machine tapes .....   | 1 month  | Stock transfer memos .....   | 1 year  |
| Tellers' blotter, journal or proof .....   | 2 years  | Stock transfer receipts .....  | 3 years   |
| Tellers' exchange tickets .....  | 3 months   | Stockholders list .....  | Optional  |
| <b>TRUST RECORDS</b>   |  | Supporting papers to transfers .....   | 10 years  |
| Advices of payment   |  | NOTE: Except recorded instruments and agreement from banks—return to transferor.                           |   |
| Securities department bond and coupon collections .....  | 1 year   | Surety bonds .....   | 10 years  |
| Amortization schedules .....   | Destroy when securities are disposed of  | Tax returns  |   |
| Buy and sell orders .....  | 1 year   | Ad valorem tax returns .....   | 5 years after filing  |
| Cancelled bonds and cancelled coupons .  | Return to issuing corporation or cremate, retaining receipt or cremation certificate until account is closed | Estate tax returns .....   | 15 years after filing   |
|  |  | Federal and state income tax returns...  | 15 years after filing   |
| Cash trial balances .....  | 6 months   | Intangible tax returns .....   | 5 years after filing  |
| Corporate trust ledger .....   | 7 years  | Social security returns .....  | 5 years after filing  |
| Correspondence   |  | Tellers' daily blotter .....   | 18 months   |
| Corporate trust (bond issues) .....  | 3 years  | Transfer instructions .....  | 5 years   |
| Dividend .....   | 3 years  | Transfer journal tapes .....   | 2 years   |
| General .....  | 3 years  | Transfer tax waivers .....   | Until closed  |
| Irregular transfers .....  | 3 years  | Trust checks .....   | Until closed  |
| Cost cards, securities .....   | 5 years  | Trust register .....   | Until closed  |
| Coupon collections records .....   | 18 months  | Vouchers, probate trust .....  | 3 years after expiration of time of appeal from order closing account.        |
| Coupon envelopes .....   | Optional   |  |   |
| Daily statement of trust department .....  | 5 years  |  |   |
| Dividend check tapes (adding machine) .....  | Optional   |  |   |
| Dividend record cards (closed) .....   | 5 years  |  |   |
| Dividend and coupon ledger .....   | Until closed   |  |   |
| Dividend and interest disbursement checks .....  | 5 years  |  |   |
| Dividend and interest disbursement list .....  | Optional   |  |   |
| Document files .....   | Until closed   |  |   |
| Fee cards .....  | Until closed   |  |   |
| Journal sheets, accounting division and stock transfer .....   | 5 years  |  |   |
| Ledger records: asset ledger, cash ledger, investment ledger, stock transfer ledger and mutual income foundation ..... | 5 years after close  |  |   |

**MINIMUM EDP RECORD  
RETENTION SCHEDULE**

| <i>TYPES OF RECORDS</i>              | <i>RETENTION PERIOD</i> |
|--------------------------------------|-------------------------|
| <b>CHECKING ACCOUNTS</b>             |                         |
| Trial balance .....                  | 1 month                 |
| Conversion (initial entry) run ..... | * 2 years (or 3 months) |
| Transaction journal .....            | * 2 years (or 3 months) |
| Master file change .....             | 6 months                |
| New and closed accounts .....        | 3 months                |

| <i>TYPES OF RECORDS</i>   | <i>RETENTION PERIOD</i>  |
|---|--|
| Unposted items .....  | 3 months   |
| Zero balances .....   | 1 month  |
| Large balance changes .....                                       | 1 month  |
| Overdrafts .....  | 3 months   |
| Stop payments .....   | 6 months   |
| Service charges .....   | 1 month  |
| Uncollected funds .....   | 1 month  |
| Customer statement .....  | 5 years  |
| <b>SAVINGS ACCOUNTS</b>   |  |
| Daily transactions journal .....                                  | 6 months   |
| Daily transactions list of accounts active since last trial ..... | 1 week   |
| Exception report .....  | 1 year   |
| Closed accounts, control .....                                    | 6 months   |
| Current active accounts .....                                     | 3 years  |
| Annual statistical analysis .....                                 | Optional   |
| Interest report .....   | 6 months   |
| 1099 listing, summary .....                                       | Optional   |
| Opened and closed accounts .....                                  | 6 months   |
| Trial balance .....   | Optional (if statement or account history retained, otherwise 5 years) |
| Savings statement-microfilm .....                                 | 5 years  |
| <b>INSTALLMENT LOANS</b>  |  |
| Daily payment journal .....                                       | 2 years  |
| Trial balance (if only complete history on borrower) .....        | 5 years  |
| New loan report .....   | 2 years  |
| Loan paid report .....  | 2 years  |
| Past-due report .....   | Optional   |

(Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1701; effective May 1, 1978; amended Jan. 27, 1992; amended April 19, 1993.)

## **Article 16.—CHARTER APPLICATIONS**

**17-16-1. Application; filing.** (a) An application for a certificate of authority and any supplemental information shall be filed by submitting an original and nine copies to the office of the state bank commissioner.

(b) The application shall be filed at least 14 calendar days before the board's regular meeting date in order to be included on the agenda for that meeting. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)

**17-16-2. Application; contents.** Each application for a certificate of authority shall contain the following information: (a) The name and address of the proposed bank or trust company;

(b) the names and addresses of the organizers,

proposed officers, proposed directors, and shareholders of the proposed bank or trust company;

(c) a detailed financial statement for the organizers, proposed officers, and proposed directors, and for any individual shareholder or group of proposed shareholders acting in concert that will own or control 10% or more of the stock of the proposed bank or trust company. The financial information shall be fewer than 90 days old and shall be certified by the owners;

(d) a statement of the character, qualifications, and experience of the organizers, proposed officers, and proposed directors, and of any individual shareholder or group of proposed shareholders acting in concert that will own or control 10% or more of the stock of the proposed bank or trust company, including the number and type of any criminal convictions;

(e) a statement of fact by the applicant to support a finding of public need for the proposed bank or trust company in the community where it will be located;

(f) a list of the names and addresses of each state bank, national bank, savings and loan association, credit union or trust company, and their branches, located within a radius of 25 miles of the site of the proposed bank or trust company. If the proposed bank or trust company is to be located in a metropolitan area with a population of 100,000 or more, as defined by the office of the state bank commissioner, the listing required by this subsection may, at the discretion of the commissioner, be limited to a five-mile radius of the site of the proposed bank or trust company; and

(g) an affidavit of publication of notice that the applicant intends to file an application for a certificate of authority. The notice shall meet the following requirements:

(1) Be published in a newspaper of general circulation in the city where the proposed bank or trust company is to be located, or if there is no such official newspaper, in an official newspaper for the county in which the city is located;

(2) be in the form prescribed by the board;

(3) be published on the same day for two consecutive weeks, with the second publication appearing at least 14 calendar days before any action taken by the board; and

(4) contain a statement that any interested party may submit, in writing, comments in support of or opposition to the application. Any comment letter of support or opposition shall be filed with the office of the state bank commissioner not

later than 10 calendar days after the second publication. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1801, as amended by L. 2001, ch. 87, §13, and K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996; amended Jan. 18, 2002.)

**17-16-3.** (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; revoked Aug. 9, 1996.)

**17-16-4. Comment letters; notification of the applicant.** The applicant shall be notified of the receipt of any comment letters and furnished a copy of those letters. The applicant may provide a written response to the board regarding any comment letters within 10 calendar days following the date the applicant was furnished copies of the comment letters. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1801; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Aug. 9, 1996.)

**17-16-5 to 17-16-6.** (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; revoked Aug. 9, 1996.)

**17-16-7.** (Authorized by K.S.A. 9-1713; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; revoked Aug. 9, 1996.)

**17-16-8.** (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended April 19, 1993; revoked Aug. 9, 1996.)

**17-16-9. Application; consideration by the board.** (a) After considering the application, including any comment letters and the applicant's response to comment letters, the board shall determine whether to approve or deny the application.

(b) The state banking board shall not be required to make any determination unless the board has had at least 10 calendar days to consider any comment letters or the applicant's response to such letters. (Authorized by K.S.A. 9-1713; im-

plementing K.S.A. 9-1802; effective, E-77-18, March 19, 1976; effective, E-78-12, April 27, 1977; effective May 1, 1978; amended Jan. 27, 1992; amended Aug. 9, 1996.)

## Article 17.—FINANCIAL FUTURES CONTRACTS

**17-17-1. Limitation on engaging in futures.** A bank's authority to engage in financial futures contracts, pursuant to K.S.A. 1995 Supp. 9-1101 shall be limited to using the contracts as a hedge. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

**17-17-2. Definitions.** As used in this article: (a) "contract" means a financial futures contract; and

(b) "hedging" means a purchase or sale made as protection against a known risk and not primarily for income or profit. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; amended, T-85-32, Dec. 19, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

**17-17-3. Adoption of policy by bank.** (a) The board of directors shall establish a written policy to engage in financial futures contracts. Policy objectives and limitations shall be specific enough to outline permissible contract strategies and their relationship to other banking activities.

(b) Record keeping systems shall be sufficiently detailed to permit internal auditors and examiners to determine whether operating personnel have acted in accordance with authorized objectives. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

**17-17-4. Notice to commissioner.** A bank shall notify the commissioner of the bank's intention to engage in financial futures contracts before commencement of the activity. The bank shall include the following information in the notice:

(a) a copy of the written policy of the bank, established by the board of directors, pursuant to K.A.R. 17-17-3;

(b) the background and experience of all persons authorized to buy and sell contracts;

(c) the trading limits to be imposed upon all persons authorized to buy and sell contracts;

(d) the conditions, if any, which permit deviations from trading limits;

(e) the bank personnel responsible for authorizing any deviations in trading limits;

(f) the procedures developed to prevent unauthorized trading;

(g) copies of forms, in blank, which inform management of the daily contract activity; and

(h) copies of internal record keeping forms, in blank, which reflect the bank's daily contract activity with regard to:

(1) the maturity of each outstanding contract and the type and value of the corresponding cash transaction;

(2) the maturity date of each contract;

(3) the current market price and value of each contract;

(4) the outstanding gross futures position;

(5) the open position;

(6) the amount of money held in margin accounts;

(7) any maturity gaps existing between the maturity date of the contract and the completion dates of the corresponding cash transaction;

(8) the profit or loss for each corresponding cash and futures transaction;

(9) the aggregate profit or loss for all relevant cash and futures transactions; and

(10) the type and amount of each expected cash transaction that did not materialize. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

#### **17-17-5. Monthly review of contracts.**

The board of directors, a duly authorized committee or the bank's internal auditors shall review financial futures contract positions on a monthly basis to ascertain conformance with the bank's written policy. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

#### **17-17-6. Maintenance of ledger accounts or registers.**

(a) Each bank engaging in financial futures contracts shall maintain general ledger memorandum accounts or commitment registers to adequately identify and control all commitments to make or take delivery of securities.

(b) The bank's registers and supporting journals shall, at a minimum, include the following:

(1) the type, whether the position is long or short, and the amount of each contract;

(2) the maturity date of each contract;

(3) the current market price and cost of each contract;

(4) the amount of money held in margin accounts; and

(5) an identification of the asset or liability being hedged. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

#### **17-17-7. Review of contracts; market valuation.**

(a) Except for financial futures contracts described in K.A.R. 17-17-8, the bank shall review each open position and shall determine the market value at least monthly, regardless of whether the bank is required to deposit margin in connection with a given contract.

(b) The bank shall value each contract on the basis of either market or the lower of cost or market, at the option of the bank.

(1) The bank shall recognize any losses resulting from monthly contract valuation as a current expense item. Any bank that values contracts on a market basis shall recognize gains as current income items.

(2) In the event the above described contracts result in the acquisition of securities, the bank shall record these securities on a basis consistent with that applied to the contracts, meaning either market or the lower of cost or market. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

#### **17-17-8. Hedging of mortgage banking operations.**

(a) The bank shall account for financial futures contracts associated with bona fide hedging of mortgage banking operations in accordance with generally accepted accounting principles applicable to the activity.

(b) As used in this regulation, "contracts associated with bona fide hedging of mortgage banking operations" means the origination and purchase of mortgage loans for resale to investors or the issuance of mortgage-backed securities. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

#### **17-17-9. Effect on bank's financial con-**



**dition.** The financial reports of any bank engaging in financial futures contracts shall disclose in an explanatory note any financial futures contract activity that materially affects the bank's financial condition. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

**17-17-10. Internal controls; reporting.**

To assure adherence to bank policy and prevent unauthorized trading and other abuses, each bank engaging in financial futures contracts shall establish internal controls including monthly reports to management, segregation of duties, and internal audit programs. (Authorized by K.S.A. 9-1713; implementing K.S.A. 1995 Supp. 9-1101; effective, T-85-20, July 2, 1984; effective May 1, 1985; amended Aug. 9, 1996.)

**Article 18.—OPEN-END  
INVESTMENT COMPANIES**

**17-18-1 to 17-18-3.** (Authorized by K.S.A. 9-1713; implementing K.S.A. 1984 Supp. 9-1101; effective, T-85-32, Dec. 19, 1984; effective May 1, 1985; revoked Aug. 9, 1996.)

**17-18-4.** (Authorized by K.S.A. 9-1713; implementing K.S.A. 1984 Supp. 9-1101; effective, T-85-32, Dec. 19, 1984; effective May 1, 1985; amended Jan. 27, 1992; revoked Aug. 9, 1996.)

**Article 19.—BANK SUBSIDIARIES  
ENGAGED IN SECURITIES ACTIVITIES**

**17-19-1. Organization; application approval.** (a) Prior to its organization to engage in securities activities in this state, each bank subsidiary shall make application to and obtain approval from the state bank commissioner and the state banking board. Each application shall contain all required information as prescribed by the commissioner and the state banking board.

(b) Upon filing an application to form a bank subsidiary to engage in securities activities, the following criteria shall be considered by the commissioner and the state banking board prior to granting authority:

(1) the financial standing, general business experience and character of the organizers and incorporators;

(2) the character, qualifications and experience of the officers of the proposed bank subsidiary;

(3) the public need for the proposed bank subsidiary;

(4) the prospects for success of the proposed bank subsidiary; and

(5) any other factors the commissioner or the state banking board deems relevant to the applicant.

(c) Each expense incurred in making any examination and investigation of an application to form a bank subsidiary to engage in securities activities shall be paid by the applicant, who shall pay \$1,000 to the commissioner to defray such expense. The commissioner may require an additional payment not to exceed \$4,000 at any time deemed necessary. Any unused portion of such payment shall be refunded.

(d) Any application may be denied or authority revoked for any bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities upon finding any violation of the state banking department regulations.

(e) Each bank subject to revocation of authority to own, hold or otherwise operate a bank subsidiary engaged in securities activities shall be afforded the right to a hearing pursuant to the Kansas administrative procedure act. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101, effective Nov. 20, 1989.)

**17-19-2. Registration and licensing; violations; examination.** (a) Prior to engaging in securities activities, each bank subsidiary shall comply with registration and licensing requirements of the appropriate federal and state securities regulatory agencies. Each bank subsidiary shall maintain on file with the Kansas banking department copies of all required registration documents, together with copies of each license or registration documents issued to the bank subsidiary by each regulatory agency.

(b) Any application may be denied or authority revoked for any bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities upon notification of any violation of federal or state securities laws or regulations.

(c) Any denial of an application or revocation of authority for a bank to own, hold or otherwise operate a bank subsidiary engaged in securities activities shall be made by the commissioner, subject to confirmation by the state banking board.

(d) Each bank subsidiary found to be in violation of any federal or state securities law or regulation shall notify the commissioner of each vi-

olation within 10 days of such finding. Each notice shall include all material facts surrounding such violation including:

- (1) identification of parties involved;
- (2) date of violation;
- (3) nature of violation; and
- (4) penalties assessed.

(e) The expense, including salaries, travel expenses, supplies and equipment, of each examination of a bank subsidiary deemed necessary by the bank commissioner after receiving notification as required by subsection (d) of this regulation shall be paid by the bank. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101; effective Nov. 20, 1989.)

**17-19-3. Wholly-owned subsidiary; leasing; employees; office location.** (a) Each bank subsidiary engaged in securities activities shall be a wholly-owned subsidiary of the parent bank.

(b) Any parent bank may lease or sell office space to its subsidiary engaged in securities activities; provided the lease or sale is of a bona fide nature and represents a fair market value in the community market place. Office space leased or sold by a parent bank to its subsidiary engaged in securities activities shall be separate and distinct from the office space of the parent bank.

(c) Each bank subsidiary engaged in securities activities may employ parent bank employees provided those employees are fairly compensated by the bank subsidiary.

(d) Each bank subsidiary engaged in securities activities shall locate no office outside the state of Kansas unless the prior approval of the bank commissioner and the state banking board is obtained. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101, effective Nov. 20, 1989.)

**17-19-4. Capital; lending limit.** The aggregate of unsecured loans and capital investments to each bank subsidiary by each parent bank shall not exceed 15 percent of the total amount of capital stock paid in and unimpaired and the unimpaired surplus fund of the parent bank. (Authorized by and implementing K.S.A. 1988 Supp. 9-1101; effective Nov. 20, 1989.)

## Article 20.—EMPLOYMENT

**17-20-1. Employment; security background check.** (a) Each Deputy Commissioner, Special Assistant or other employee necessary to properly discharge the duties of the

office shall submit to a security background check prior to being employed in such position.

(b) Upon the commencement of the interview process, every candidate shall be given written notice that a security background check is required.

(c) The security background check shall be limited to criminal history record information as provided by K.S.A. 22-4701 et seq. and amendments thereto.

(d) If the criminal history record information reveals convictions of crimes of dishonesty, such conviction(s) may be used to disqualify a candidate for any position within the Office of the State Bank Commissioner.

(e) If the criminal history record information is used to disqualify a candidate, the candidate shall be informed in writing of that decision.

(f) Upon determining whether to hire or disqualify a candidate, the candidate's criminal history record information report shall be destroyed. The candidate's personnel file shall only contain a statement that a security background check was performed and the date thereof. (Authorized by and implementing K.S.A. 75-3135; effective Jan. 27, 1992.)

## Article 21.—BANK HOLDING COMPANIES; APPLICATION FOR THE ACQUISITION OF A KANSAS BANK OR BANK HOLDING COMPANY

**17-21-1. Definitions.** For purposes of this article, the terms used shall have the meanings attributed to them by K.S.A. 1995 Supp. 9-519 and K.S.A. 1995 Supp. 9-701. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended April 19, 1993; amended Aug. 9, 1996.)

**17-21-2. Application.** (a) With the approval of the commissioner, any bank holding company may acquire control of one or more Kansas banks or Kansas bank holding companies.

(b) A bank holding company shall be deemed to be acquiring control of a Kansas bank or Kansas bank holding company if, as a result of the proposed acquisition:

(1) the company, directly or indirectly or acting through one or more persons, will own, control or have the power to vote 25 percent or more of any class of voting securities of a Kansas bank or Kansas bank holding company;

(2) the company will control in any manner the election of a majority of the directors or trustees

of a Kansas bank or Kansas bank holding company; or

(3) the commissioner determines that the company directly or indirectly will exercise a controlling influence over management or policies of a Kansas bank or Kansas bank holding company.

(c) Each request for approval to acquire control of a Kansas bank or Kansas bank holding company shall be made by filing an application in the form required by the commissioner.

(1) A separate application and fee shall be filed for each bank or bank holding company to be acquired.

(2) The applicant holding company shall bear any additional costs of the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended April 19, 1993; amended Aug. 9, 1996.)

**17-21-3. Contents of application.** (a) Each applicant shall respond accurately and fully to all questions contained in the application form provided by the commissioner.

(b) Upon submitting an application, each applicant shall provide the commissioner with the following additional information:

(1) a statement by the applicant demonstrating that the proposed acquisition is in the interest of the public and of the depositors and creditors of the bank to be acquired or any bank subsidiaries of the bank holding company to be acquired;

(2) a copy of all cease and desist orders, memorandums of understanding or other formal or informal actions taken by any federal or state regulator, under which the applicant or any of the applicant's subsidiaries or affiliates has operated within the 18 months preceding the application;

(3) a copy of the most recent regulatory examination of any bank or trust company subsidiary or affiliate of the applicant if a composite rating of "3," "4," or "5" was received;

(4) a copy of the most recent report of examination of the bank holding company prepared by the federal reserve bank or the applicant's state regulator. If the commissioner is not satisfied that the information provided gives adequate assurance that the bank or banks to be acquired will be operated safely and soundly, the commissioner may conduct an examination of the applicant or any of its subsidiaries or affiliates for the purpose of augmenting such information. The applicant shall bear the cost of any examination;

(5) all information required by K.S.A. 1995 Supp. 9-1722; and

(6) an analysis demonstrating that the acquisition will not cause the applicant to exceed limitations imposed by K.S.A. 1995 Supp. 9-520(a) regarding concentrations of deposits. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)

**17-21-4. Filing of application.** (a) Within 14 calendar days of the date any agreement to purchase a bank or bank holding company is entered into, a notice of intent to submit an application pursuant to K.S.A. 1995 Supp. 9-532 shall be filed with the commissioner.

(b) The application shall be filed within 90 calendar days after an agreement has been entered into. At the discretion of the commissioner, failure to file an application within 90 calendar days may be grounds for rejection of the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532; effective Aug. 10, 1992; amended Aug. 9, 1996.)

**17-21-5. When complete.** An application filed pursuant to K.S.A. 9-532 shall be complete when: (a) the materials described in K.S.A. 1995 Supp. 9-533, K.S.A. 1995 Supp. 9-536 and K.A.R. 17-21-3 have been filed with the commissioner; and

(b) the board of governors of the federal reserve system or the appropriate federal reserve bank acting on delegated authority, and the commissioner have determined that no further information shall be required to complete the application. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532, and K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)

**17-21-6. Concurrent jurisdiction.** (a) Examinations of the applicant, its subsidiaries and its affiliates may be conducted by the commissioner. The applicant shall bear the cost of an examination.

(b) The applicant's state and federal regulators may be provided with copies of reports of examinations and other information compiled by the commissioner. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-537; effective Aug. 10, 1992; amended Aug. 9, 1996.)

**17-21-7.** (Authorized by K.S.A. 9-1713; im-

plementing K.S.A. 9-524; effective Aug. 10, 1992; revoked Aug. 9, 1996.)

**17-21-8. Application; request for additional information.** An application filed pursuant to K.S.A. 1995 Supp. 9-532 may be returned by the commissioner if the applicant does not respond in writing within 20 calendar days of a written request by the commissioner for additional information. If the commissioner returns the application, the application shall be deemed withdrawn and the applicant shall forfeit the filing fee. (Authorized by K.S.A. 1995 Supp. 9-539; implementing K.S.A. 1995 Supp. 9-532 and K.S.A. 1995 Supp. 9-533; effective Aug. 10, 1992; amended Aug. 9, 1996.)

## Article 22.—APPLICATION FEES

**17-22-1. Application fees.** (a) At the time of filing any application described below, the applicant shall remit to the office of the state bank commissioner the following nonrefundable fee:

|   |                     |
|---|---------------------|
| (1) Bank or trust company charter .....   | \$2,500             |
| (2) New branch bank .....   | 1,000               |
| (3) Relocation  |                     |
| (A) Main office or branch relocation .....  | 1,000               |
| (B) Short-form main office relocation .....   | 500                 |
| (C) Interchange of main office and branch .....   | 500                 |
| (D) Main office relocation with existing location retained as a branch .....                          | 1,000               |
| (E) Short-form main office relocation with existing location retained as a branch .....               | 500                 |
| (4) Merger, consolidation, or transfer of assets and liabilities .....                                | 1,000               |
| (5) Change of control   |                     |
| (A) General .....   | 1,000               |
| (B) Bona fide gift or inheritance .....   | 500                 |
| (C) Formation of one-bank holding company and associated exchange of stock .....                      | 500                 |
| (6) Conversion to state charter .....   | no fee              |
| (7) Bank service corporation .....  | 500                 |
| (8) Fiduciary activities  |                     |
| (A) Fiduciary powers .....  | no fee              |
| (B) Trust branch established pursuant to K.S.A. 9-1135 .....  | 500                 |
| (C) Trust service desk established pursuant to K.S.A. 9-2107 .....                                    | 500                 |
| (D) Trust service office established pursuant to K.S.A. 9-2108 .....                                  | 500                 |
| (E) Contracting trustee agreement established pursuant to K.S.A. 9-2107 .....                         | 500                 |
| (9) Money order license .....   | 100,                |
|   | plus \$10 per agent |
| (10) Change of name .....   | 250                 |
| (11) Revenue bond pledgibility .....  | 200                 |
| (12) Letter of good standing .....  | 50                  |
| (13) Administrative appeals pursuant to K.S.A. 9-2108(i), K.S.A. 9-2107(l), or K.S.A. 9-1135(j) ..... | 1,000               |

(b) The statutory procedures governing the applications described in paragraph (a)(2), paragraph (a)(3)(A), (C), (D) or (E), and paragraph (a)(8)(B), (C), or (D) above may require a public hearing. If a hearing is required, the applicant shall pay an additional nonrefundable fee of \$400 to defray the expenses of the hearing.

(c) The applicant shall pay any additional cost associated with any examination or investigation if the state bank commissioner determines that an on-site examination of the financial institutions or trust companies that are parties to the application is necessary. (Authorized by K.S.A. 9-1713, 9-1127c, 9-1601, 9-812, and K.S.A. 1999 Supp. 9-509, 9-532, 9-1111, 9-1111b, 9-1135, 9-1402, 9-1722, 9-1724, 9-1803, 9-1804, and 9-2107; implementing K.S.A. 1999 Supp. 9-509, 9-532, 9-1111, 9-1111b, 9-1115, 9-1135, 9-1402, 9-1722, 9-1724, 9-1803, 9-1804, and 9-2107 and K.S.A. 9-1127c, 9-1601, and 9-812; effective Oct. 19, 1992; amended Aug. 16, 1993; amended Oct. 31, 1994; amended Nov. 14, 1997; amended April 28, 2000.)

## Article 23.—TRUST SUPERVISION

**17-23-1. Definitions.** For the purposes of article 23, the following definitions shall apply. (a) “Account” means the trust, estate or other fiduciary relationship that has been established with a bank or trust company.

(b) “Bank” means a corporation as defined in K.S.A. 9-701(a) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, “bank” shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(c) “Cash management vehicle” means any checking, savings or money market account that is used to accumulate cash for payments to or for beneficiaries, or is used to accumulate cash for the purpose of making investments.

(d) “Collective investment fund” means funds held by a bank or trust company as fiduciary and invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or as custodian under the uniform transfers to minors act, K.S.A. 38-1701 et seq., and amendments thereto, or any state law sub-



stantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts that are exempt from federal income taxation under the internal revenue code.

(e) "Conservator" means an individual or a corporation who is appointed by the court to act on behalf of a conservatee and who is possessed of some or all of the powers and duties set out in K.S.A. 59-3019 and amendments thereto.

(f) "Custodian under a uniform transfers to minors act" means an account established pursuant to the uniform transfers to minors act, K.S.A. 38-1701 et seq. and amendments thereto, or pursuant to any state law substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the national conference of commissioners on uniform state laws.

(g) "Customer" means any person or account, including any agency, trust, estate, guardianship, committee, or other fiduciary account for which a bank or trust company effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, dealer bank or issuer of the securities that are subject to the transactions.

(h) "Fiduciary" means, unless otherwise defined in the operative agreement between the parties, a bank or trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with its undertaking, and shall include a trustee, executor, administrator, registrar of stocks and bonds, transfer agent, custodian under any state law substantially similar to the uniform transfers to minors act or the uniform gifts to minors act as published by the national conference of commissioners on uniform state laws, conservator of estates, assignee, receiver, managing agent, custodian or any other similar capacity in which the person or entity has investment authority or investment discretion.

(i) "Fiduciary powers" means the power to act in any fiduciary capacity conveyed by the Kansas uniform powers act.

(j) "Fiduciary records" means all matters that are written, transcribed, recorded, received, or otherwise come into possession of a bank or trust company and are necessary to preserve information concerning the acts and events relevant to the fiduciary activities of the bank or trust company.

(k) "Investment authority" means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments; to review investment decisions made by others; or to provide investment advice or counsel to others.

(l) "Investment discretion," with respect to an account, means that the bank or trust company is authorized to determine what securities or other property will be purchased or sold by or for the account.

(m) "Managing agent" means the fiduciary relationship assumed by the bank or trust company upon the creation of an account that names the bank or trust company as agent and confers investment discretion upon the bank or trust company.

(n) "Periodic plan," including any dividend reinvestment plan, automatic investment plan and employee stock purchase plan, means any written authorization for a bank acting as agent to purchase or sell for a customer a specific security or securities, either in specific amounts, calculated in security units or dollars, or to the extent of dividends and funds available, at specific time intervals and setting forth the commission or charges to be paid by the customer in connection therewith or the manner of calculating them.

(o) "Security" means any interest or instrument commonly known as a "security," whether in the nature of debt or equity, including any stock, bond, note, debenture, evidence of indebtedness or any participation in or right to subscribe to or purchase any of the foregoing. The term "security" shall not include any of the following:

(1) A deposit or share account in a federally or state insured depository institution;

(2) a loan participation;

(3) a letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) currency;

(5) any note, draft, bill of exchange, or bankers acceptance that has a maturity at the time of issuance of not more than nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) units of a collective investment fund;

(7) interests in a variable amount or a note as defined in paragraph (c)(2)(B) of K.A.R. 17-23-11; or

(8) U.S. savings bonds.

(p) "Trust committee" means the board of di-



rectors or any committee charged, by the board of directors, with the responsibility for administration and supervision of a bank trust department or the trust activities of a trust company. The “trust committee” may assign responsibility to other committees or individuals, as is necessary and appropriate.

(q) “Trust company” means those companies as defined in K.S.A. 9-701(b) and amendments thereto. With respect to any fund established pursuant to K.S.A. 9-1609 and amendments thereto, “trust company” shall also mean two or more banks or trust companies that are members of the same affiliated group and are cotrustees of the fund.

(r) “Trust department” means that group or groups of officers and employees of a bank or trust company organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the bank or trust company, whether or not the group or groups are so named. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, 9-1602, 9-1603, 9-1605, 9-1606, 9-1607, 9-1608, 9-1609, 9-1610, 9-1611, 9-1612, 9-2101, 9-2102, 9-2104, 9-2105, 9-2106, K.S.A. 2000 Supp. 9-1604, 9-2107, as amended by L. 2001, ch. 5, §48, and 9-2111, K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1, and 9-2108, as amended by L. 2001, ch. 5, §49; effective Feb. 28, 1994; amended Jan. 18, 2002.)

**17-23-2. Adoption of policies and procedures with respect to brokerage placement practices.** (a) Each bank or trust company exercising investment discretion, as defined in subsection (r) of K.A.R. 17-23-1, with respect to an account shall adopt and follow written policies and procedures intended to ensure that its brokerage placement practices comply with all applicable laws and regulations.

(b) Written policies and procedures shall address, where appropriate:

(1) the selection of persons to effect securities transactions and the evaluation of the reasonableness of any brokerage commissions paid to such persons, including the factors considered in these determinations;

(2) any acquisition of services or products, including research services, in return for brokerage commissions;

(3) the allocation of research or other services

among accounts, including those which did not generate commissions to pay for the research or other services;

(4) the need, in appropriate instances, to make disclosures concerning the policies and procedures to prospective and existing customers; and

(5) the prohibition of excessive trading in portfolios. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994.)

**17-23-3. Administration of fiduciary powers.** (a) The board of directors shall be responsible for the proper exercise of fiduciary powers by the bank or trust company.

(1) All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the bank or trust company in the exercise of its fiduciary powers, shall be the responsibility of the board.

(2) In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of any of the bank’s or trust company’s fiduciary powers it may consider proper to assign to any of the following designees:

- (A) Director;
- (B) officer;
- (C) employee; or
- (D) committee.

(b) If a trust committee is designated pursuant to paragraph (a) (2), the trust committee shall supervise the fiduciary activities of a bank or trust company and shall meet the following criteria.

(1) The trust committee shall consist of at least three directors, at least one of which shall not be an officer of the bank or trust company.

(2) The trust committee shall keep complete minutes of its actions and make periodic reports to the board of directors of its actions.

(c) A fiduciary account shall not be accepted without the prior approval of the board, or the board’s designee. A written record shall be made of each fiduciary account acceptance and of the relinquishment or closing out of any fiduciary account. Upon the acceptance of an account, a prompt verification shall be made to determine that assets received have been properly placed on accounting records and documented. The board shall also ensure that at least once during every

calendar year thereafter, and within 15 months of the last review, all the assets held in fiduciary accounts for which the bank or trust company has investment discretion, are reviewed to determine the advisability of retaining or disposing of these assets.

(d) All officers and employees taking part in the operation of a bank trust department or trust company shall be bonded.

(e) Each bank or trust company exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to render an opinion upon fiduciary matters and to advise the bank or trust company.

(f) Each bank or trust company exercising fiduciary powers shall adopt written policies and procedures to ensure that the federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. These policies and procedures, in particular, shall ensure that bank trust departments and trust companies do not use material inside information in connection with any decision or recommendation to purchase or sell any security. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 2000 Supp. 9-1114, K.S.A. 9-1601, K.S.A. 9-1602, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

**17-23-4. Books and accounts.** (a) Each bank or trust company exercising fiduciary powers shall retain fiduciary records which shall be kept separate and distinct from other records of the bank or trust company.

(b) Each such bank or trust company shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers.

(c) Each bank or trust company shall keep a record of all written complaints and related correspondence concerning any fiduciary account.

(d) A bank or trust company shall retain the records required by this article for:

- (1) a period of three years from the later of:
  - (A) termination of the fiduciary account relationship to which the records relate;
  - (B) termination of litigation relating to such account; or
  - (C) the next examination; or
- (2) a longer minimum retention period if one is prescribed by K.A.R. 17-15-1 and amendments thereto. (Authorized by K.S.A. 9-1713; imple-

menting K.S.A. 9-1130, K.S.A. 9-1603, K.S.A. 9-1608, K.S.A. 9-2103; effective Feb. 28, 1994.)

**17-23-5. Audit of trust activities.** (a) The board of directors, or an audit committee designated by the board of directors, shall make a thorough examination of the books, records, funds and securities held by the bank trust department or trust company, in a fiduciary capacity, at each of the quarterly meetings and the result of such examination shall be recorded in detail.

(b) If the board, or the designated committee, selects an auditor, the auditor's findings shall be reported directly to the board.

(c) In lieu of the required four quarterly examinations, the board of directors, or an audit committee designated by the board of directors, may accept one annual audit by a certified public accountant or an independent auditor approved by the commissioner. All audit reports and findings shall be reported to the board of directors. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1116; effective Feb. 28, 1994.)

**17-23-6. Funds awaiting investment or distribution.** (a) Funds held by a bank or trust company in a fiduciary capacity that are awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management of the account.

(1) Each bank or trust company exercising fiduciary powers shall adopt and follow written policies and procedures intended to provide that a prudent rate of return, available for trust-quality, short-term investments, is obtained upon funds so held, consistent with the requirements of the governing instrument and local law.

(2) These policies and procedures shall take into consideration all relevant factors, including the following:

(A) The anticipated return that could be obtained while the cash remains uninvested or undistributed;

(B) the cost of investing the funds;

(C) the anticipated need for the funds; and

(D) the costs and operational complexities of implementing and maintaining the investments for the bank or trust company.

(b) Funds held in trust by a bank, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust, be deposited in the

commercial or savings or other departments of the bank.

(1) If the deposits, per account, exceed current federal deposit insurance corporation (F.D.I.C.) limits, the bank shall first set aside, under control of the trust department, as collateral security, direct obligations of the United States and other obligations fully guaranteed by the United States as to principal and interest, or any other security available for pledging by commercial banks under Kansas state law.

(2) The securities that are deposited or substituted as collateral shall at all times be at least equal in market value to the amount of trust funds deposited, to the extent that the deposit exceeds F.D.I.C. insurance limits. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1603, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

**17-23-7. Investment of funds held as fiduciary.** Funds held by a bank or trust company in a fiduciary capacity shall be invested in accordance with any one or more of the following:

(a) the instrument establishing the fiduciary relationship;

(b) any order of the probate or other court; or

(c) any and all Kansas statutes and regulations applicable, including but not limited to K.S.A. 17-5004, K.S.A. 9-1609, and K.A.R. 17-23-11 and amendments thereto. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1611, K.S.A. 9-2103; effective Feb. 28, 1994.)

**17-23-8. Self-dealing.** (a) Unless lawfully authorized by the instrument creating the relationship, by court order or by the laws of the state of Kansas, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested in stock or obligations of, or property acquired from any of the following:

(1) The bank or trust company, or its directors, officers, or employees, or individuals with whom there exists such a connection;

(2) organizations in which there exists an interest that might affect the exercise of the best judgment of the bank or trust company in acquiring the property; or

(3) affiliates of the bank or trust company, or their directors, officers or employees.

(b)(1) A bank or trust company shall not lend, sell, or otherwise transfer assets of a fiduciary account for which a bank or trust company has in-

vestment discretion to the bank or trust company or any of its directors, officers, or employees, or to affiliates of the bank or trust company or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank or trust company, unless any of the following conditions is met:

(A) The transaction is lawfully authorized by the instrument creating the relationship, by written direction from the person or persons holding the power to amend or terminate the trust, by court order or by the laws of the state of Kansas;

(B) legal counsel advises the bank or trust company in writing that the bank or trust company has incurred, in its fiduciary capacity, a contingent or potential liability, and the bank or trust company desires to relieve itself from the contingent or potential liability. In this case, the bank or trust company, upon the consummation of the sale or transfer of assets, shall make reimbursement in cash at the greater of book or market value of the assets to the fiduciary account;

(C) the transaction is authorized as is provided in paragraph (b)(8)(B) of K.A.R. 17-23-11; or

(D) the transaction is required in writing by the state bank commissioner.

(2) Notwithstanding paragraph (b)(1), a bank or trust company may lend funds held in trust to participants and beneficiaries of employee benefit plans in accordance with the exemptions found in section 408 of the employee retirement income security act of 1974, 29 U.S.C. §1108, as in effect on December 17, 1999, which is hereby adopted by reference.

(c) Except as provided in subsection (b) of K.A.R. 17-23-6, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested by the purchase of stock or obligations of the bank or trust company or its affiliates unless authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas.

(1) If the retention of stock or obligations of the bank or trust company or its affiliates is authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas, it may exercise rights to purchase its own stock, or securities convertible into its own stock, when offered pro rata to stockholders.

(2) If the exercise of rights or receipts of a stock dividend results in fractional share holdings, ad-

ditional fractional shares may be purchased to complement the fractional shares so acquired.

(d) A bank or trust company may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and is not prohibited by any governing instrument.

(e) A bank or trust company may make a loan to an account from the funds belonging to another account, if the making of these loans to a designated account is authorized by the instrument creating the account from which the loans are made.

(f) A bank or trust company may make a loan to an account and may take as security assets of the account, if the transaction is fair to the account.

(g) Except with the specific written approval of its board of directors, a bank or trust company shall not permit any of its current officers or employees to retain any compensation for acting as a cofiduciary with the bank or trust company in the administration of any account undertaken by it. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1609, K.S.A. 9-1611, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

**17-23-9. Custody of investments.** (a) The investments of each fiduciary account shall be kept separate from the assets of the bank or trust company, and shall be placed in the joint custody or control of not less than two of the officers or employees of the bank or trust company designated for that purpose by the board of directors. All of these officers and employees shall be adequately bonded.

(b) A bank or trust company may permit the investments of a fiduciary account to be held by a third party custodian in accordance with a written custodial agreement, which shall be obtained from all depositories other than the federal reserve bank. At a minimum, the custodial agreement shall meet the following requirements:

(1) Be signed by the bank or trust company and the custodian;

(2) clearly state that the parties intend for the agreement to establish a custodial relationship;

(3) require that the books and records of the immediate upstream depository custodian document that all of the assets held by the custodian on behalf of the bank or trust company meet the following criteria:

(A) Are held in the name of the bank or trust company or in the bank's or trust company's nominee name; and

(B) are separate from the assets of the custodian or from the assets of the custodian's other account holders;

(4) provide for the continuous and uncontested control of the assets by the bank or trust company and establish procedures for the release or transfer of the assets at the direction of the bank or trust company; and

(5) prohibit the custodian from utilizing the assets for the custodian's business or own account.

(c) The investments of each fiduciary account shall be held in accordance with one of the following requirements:

(1) The investments shall be kept separate from those of all other accounts, except as provided in K.S.A. 9-1609, and amendments thereto, and K.A.R. 17-23-11.

(2) The investments shall be identified as the property of the relevant account. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1603, K.S.A. 9-1607, K.S.A. 9-1608, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

**17-23-10. Surrender of fiduciary powers.** Any bank or trust company which has been granted the right to exercise fiduciary powers and which desires to surrender such right shall file with the state bank commissioner a certified copy of the resolution of its board of directors signifying such a desire. Upon receipt of such resolution, the state bank commissioner may make an investigation. If the commissioner is satisfied that the bank or trust company has been discharged from all fiduciary duties which it has undertaken, a letter to the bank or trust company certifying that it is no longer authorized to exercise fiduciary powers shall be issued by the commissioner. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1604, K.S.A. 9-2103; effective Feb. 28, 1994.)

**17-23-11. Collective investment.** (a) Funds held by a bank or trust company as fiduciary may be invested collectively in either of the following:

(1) A common trust fund maintained by the bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, conservator, or as custodian under any state law



substantially similar to the uniform gifts to minors act or the uniform transfers to minors act as published by the American law institute; or

(2) a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under the internal revenue code.

(b) Collective investment funds, as defined in subsection (d) of K.A.R. 17-23-1, shall be administered as follows.

(1) Each collective investment fund shall be established and maintained in accordance with a written plan, referred to herein as "the plan," which shall be approved by a resolution of the bank or trust company board of directors or by a committee authorized by the board.

(A) "The plan" shall contain appropriate provisions not inconsistent with the rules and regulations of the state bank commissioner as to the manner in which the fund is to be operated, including provisions relating to the following:

(i) The investment powers and a general statement of the investment policy of the bank or trust company with respect to the fund;

(ii) the allocation of income, profits, and losses;

(iii) fees and expenses that will be charged to the fund and to participating accounts;

(iv) the terms and conditions governing the admission or withdrawal of participations in the fund;

(v) the auditing of accounts of the bank or trust company with respect to the fund;

(vi) the basis and method of valuing assets in the fund, setting forth criteria for each type of asset;

(vii) the expected frequency for income distribution to participating accounts;

(viii) the minimum frequency for valuation of assets of the fund;

(ix) the period following each such valuation date during which the valuation may be made, which in usual circumstances shall not exceed 10 business days;

(x) the basis upon which the fund may be terminated; and

(xi) any other matters that may be necessary to define clearly the rights of participants in the fund.

(B) Except as otherwise provided in paragraph (b)(15) of this regulation, fund assets shall be valued at market value unless that value is not readily ascertainable, in which case a fair value deter-

mined in good faith by the fund trustees may be used.

(C) A copy of "the plan" shall be available at the principal office of the bank or trust company for inspection during all business hours, and upon request a copy of "the plan" shall be furnished to any person.

(2) Property held by a bank or trust company in its capacity as trustee of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation under any provision of the internal revenue code may be invested in collective investment funds, subject to the provisions herein contained pertaining to these funds, and may qualify for tax exemption pursuant to section 584 of the internal revenue code. Assets of retirement, pension, profit sharing, stock bonus, or other trusts that are exempt from federal income taxation by reason of being described in section 401 of the code may be invested in collective investment funds established under the provisions of paragraph (a)(2) of this regulation if the fund qualifies for tax exemption under revenue ruling 56-267 and following rulings.

(3) All participations in the collective investment fund shall be on the basis of a proportionate interest in all of the assets. In order to determine whether the investment of funds received or held by a bank or trust company as fiduciary in a participation in a collective investment fund is proper, the bank or trust company may consider the collective investment fund as a whole and shall not be prohibited from making the investment because any particular asset is non-income producing.

(4) Each bank or trust company administering a collective investment fund shall determine the value of the assets in the fund as of the date set for the valuation of assets at least once every three months. However, in the case of a fund described in paragraph (a)(2) above that is invested primarily in real estate or other assets that are not readily marketable, the bank or trust company shall determine the value of the fund's assets at least once each year.

(A) Participation shall not be admitted to or withdrawn from the fund except according to the following:

(i) On the basis of the valuation; and

(ii) according to the valuation date.

(B) Participation shall not be admitted to or withdrawn from the fund unless a written request



for or notice of intention of taking such action shall have been entered on or before the valuation date in the fiduciary records of the bank or trust company and approved in the manner as the board of directors shall prescribe. No requests or notices may be canceled or countermanded after this valuation date.

(C) If a fund described in paragraph (a)(2) of this regulation is to be invested in real estate or other assets that are not readily marketable, the bank or trust company may require a prior notice period not to exceed one year, for withdrawals.

(5)(A) Each bank or trust company administering a collective investment fund shall at least once during each period of 12 months cause an adequate audit to be made of the collective investment fund by auditors responsible only to the board of directors of the bank or trust company. In the event the audit is performed by independent public accountants, the reasonable expenses of the audit may be charged to the collective investment fund.

(B) Each bank or trust company administering a collective investment fund shall at least once during a period of 12 months prepare a financial report of the fund. This report, based upon the above audit, shall contain a list of investments in the fund showing the following:

- (i) The cost and current market value of each investment;
- (ii) a statement for the period since the previous report showing purchases, with cost;
- (iii) sales, with profit or loss and any other investment changes;
- (iv) income and disbursements; and
- (v) an appropriate notation as to any investments in default.

(C) The financial report may include a description of the fund's value on previous dates, as well as its income and disbursements during previous accounting periods. Predictions or representations as to future results shall not be made. In addition, as to funds described in paragraph (a)(1) of this regulation, neither the report nor any other publication of the bank or trust company shall make reference to the performance of funds other than those administered by the bank or trust company.

(D) A copy of the financial report shall be furnished, or notice shall be given that a copy of the report is available and will be furnished without charge upon request, to each person to whom a regular periodic accounting would ordinarily be

rendered with respect to each participating account. A copy of the financial report may also be furnished to prospective customers. The cost of printing and distribution of these reports shall be borne by the bank or trust company. In addition, a copy of the report shall be furnished upon request to any person for a reasonable charge. The fact of the availability of the report for any fund described in paragraph (a)(1) of this regulation may be given publicity, solely in connection with the promotion of the fiduciary services of the bank or trust company.

(E) Except as provided in this regulation, the bank or trust company shall not advertise or publicize its collective investment fund or funds described in paragraph (a)(1) of this regulation.

(6) When participations are withdrawn from a collective investment fund, distributions may be made in cash or ratably in kind, or partly in cash and partly in kind. However, all distributions on any one valuation date shall be made on the same basis.

(7) If, for any reason, an investment is withdrawn in kind from a collective investment fund for the benefit of all participants in the fund at the time of the withdrawal and the investment is not distributed ratably in kind, it shall be segregated and administered or realized upon for the benefit ratably of all participants in the collective investment fund at the time of withdrawal.

(8)(A) A bank or trust company shall not have any interest in a collective investment fund other than in its fiduciary capacity. Except for temporary net cash overdrafts or as otherwise specifically provided herein, it shall not lend money to a fund, sell property to, or purchase property from a fund. Assets of a collective investment fund shall not be invested in stock or obligations, including time or savings deposits, of the bank or trust company or any of its affiliates. However, these deposits may be made of funds awaiting investment or distribution. Subject to all other provisions of this regulation, funds held by a bank or trust company as fiduciary for its own employees may be invested in a collective investment fund. A bank or trust company shall not make any loan on the security of a participation in a fund. If because of a creditor relationship or otherwise the bank or trust company acquires an interest in a participation in a fund, the participation shall be withdrawn on the first date on which the withdrawal can be effected. An unsecured advance to an account holding a participation shall not be deemed to

constitute the acquisition of an interest by a bank or trust company until the time of the next valuation date arrives.

(B) Any bank or trust company administering a collective investment fund may purchase from the fund for its own account any defaulted fixed income investment held by the fund, if in the judgment of the board of directors the cost of segregation of the investment would be greater than the difference between its market value and its principal amount plus interest and penalty charges due. If the bank or trust company elects to purchase the investment, it shall do so at its market value or at the sum of cost, accrued unpaid interest, and penalty charges, whichever is greater.

(9) The reasonable expenses incurred in servicing mortgages held by a collective investment fund may be charged against the income account of the fund and paid to servicing agents, including the bank or trust company administering the fund.

(10) A bank or trust company administering a collective investment fund shall have the exclusive management of it, except as prudence may allow delegation.

(A) The bank or trust company may charge a fee for the management of the collective investment fund if the fractional part of the fee proportionate to the interest of each participant does not, when added to any other compensations charged by a bank to a participant, exceed the total amount of compensations that would have been charged to the participant if no assets of the participant had been invested in participations in the fund.

(B) The bank or trust company shall absorb the costs of establishing or reorganizing a collective investment fund.

(11) A bank or trust company administering a collective investment fund shall not issue any certificate or other document evidencing a direct or indirect interest in this fund in any form.

(12) A mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall not be deemed to be a violation of this regulation if promptly after the discovery of the mistake the bank or trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

(13) Short-term investment funds established under subsection (a) of this regulation may be operated on a cost, rather than market value, basis for purposes of admissions and withdrawals, if the

plan of operation satisfies each of the following requirements.

(A) Investments shall be limited to bonds, notes, or other evidences of indebtedness payable on demand, including variable amount notes, or having a maturity date not exceeding 91 days from the date of purchase. However, 20 percent of the value of the fund may be invested in longer term obligations.

(B) The difference between the cost and anticipated principal receipt on maturity shall be accrued on a straight-line basis.

(C) Assets of the fund shall be held until maturity under usual circumstances.

(D) After effecting admissions and withdrawals, not less than 20 percent of the value of the remaining assets of the fund shall be composed of cash, demand obligations, and assets that will mature on the fund's next business day.

(c) In addition to the investments permitted under subsection (a) of this regulation, funds or other property received or held by a bank or trust company as fiduciary may be invested collectively, to the extent not prohibited by state law, as follows:

(1) In shares of a mutual trust investment company, organized and operated pursuant to a statute that specifically authorizes the organization of these companies exclusively for the investment of funds held by corporate fiduciaries, commonly referred to as a "bank or trust company fiduciary fund";

(2)(A) In a single real estate loan, a direct obligation of the United States, or an obligation fully guaranteed by the United States, or in a single fixed amount security, obligation or other property, either real, personal or mixed, of a single issuer; or

(B) on a short-term basis in a variable amount note of a borrower of prime credit, if the note is maintained by the bank or trust company on its premises and is utilized by it only for investment of moneys held in fiduciary accounts.

The bank or trust company shall not participate in the loans or obligations authorized under paragraphs (c)(2)(A) and (B) and shall not have an interest in any investment therein except in its capacity as fiduciary;

(3) in a common trust fund maintained by the bank or trust company for the collective investment of cash balances received or held by a bank or trust company in its capacity as trustee, executor, administrator, or guardian, which the bank

or trust company considers to be individually too small to be invested separately to advantage:

(A)(i) The total investment for such fund shall not exceed \$100,000;

(ii) the number of participating accounts shall be limited to 100; and

(iii) no participating account may have an interest in the fund in excess of \$10,000;

(B) in applying these limitations, if two or more accounts are created by the same person or persons and one-half of the income or principal of each account is presently payable or applicable to the use of the same person or persons such account shall be considered as one;

(C) a fund shall not be established or operated under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation;

(4) in any investment specifically authorized by court order, or authorized by the instrument creating the fiduciary relationship, in the case of trusts created by a corporation, its subsidiaries and affiliates or by several individual settlors who are closely related. An investment shall not be made under this paragraph for the purpose of avoiding the provisions of subsection (b) of this regulation; or

(5) in any other manner that is approved in writing by the state bank commissioner. (Authorized by K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1609 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

**17-23-12. Record-keeping for securities transactions.** Each bank or trust company effecting securities transactions for customers shall maintain the following records with respect to such transactions for at least three years. (a) There shall be chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show:

(1) the account or customer for which each such transaction was effected;

(2) the description of the securities;

(3) the unit and aggregate purchase or sale price, if any; and

(4) the trade date and the name or other designation of the broker, dealer or other person from whom purchased or to whom sold.

(b) There shall be account records for each customer which shall reflect:

(1) all purchases and sales of securities;

(2) all receipts and deliveries of securities;

(3) all receipts and disbursements of cash with respect to transactions in securities for such accounts; and

(4) all other debits and credits pertaining to transactions in securities.

(c) There shall be a separate memorandum or order ticket for each order to purchase or sell securities, whether executed or canceled, which shall include:

(1) the account or accounts for which the transaction was effected;

(2) whether the transaction was a market order, limit order or subject to special instructions;

(3) the time the order was received by the trader or other bank or trust company employee responsible for effecting the transaction;

(4) the time the order was placed with broker or dealer; or if there was no broker or dealer, the time the order was executed or canceled;

(5) the price at which the order was executed; and

(6) the price that the broker or dealer utilized.

(d) There shall be a record of each broker or dealer selected by the bank or trust company to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year. Nothing contained in this paragraph shall require a bank or trust company to maintain the records required by this regulation in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1130, K.S.A. 9-1603, K.S.A. 9-1608, K.S.A. 9-2103; effective Feb. 28, 1994.)

**17-23-13. Form of notification for securities transactions.** Each bank or trust company effecting a securities transaction for a customer shall maintain for at least three years and except as provided in K.A.R. 17-23-14, shall mail or otherwise furnish to such customer either of the following types of notifications: (a)(1) a copy of the confirmation of a broker or dealer relating to the securities transactions; and

(2) if the bank or trust company is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a written agreement between the bank or trust

company and the customer, a statement of the source and amount of any remuneration to be received; or

(b) a written notification disclosing:

(1) the name of the bank or trust company;

(2) the name of the customer;

(3) whether the bank or trust company is acting as an agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity;

(4) the date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of the customer and the identity, price and number of shares or units, or principal amount in the case of debt securities, of the security purchased or sold by such a customer;

(5) the amount of any remuneration received or to be received by the bank or trust company from the customer in connection with the transaction;

(6) the source and amount of any other remuneration to be received by the bank or trust company in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank or trust company and the customer.

In the case of U.S. government securities, federal agency obligations and municipal obligations, this paragraph (b)(6) shall apply only with respect to remuneration received by the bank or trust company in an agency transaction; and

(7) the name of the broker or dealer utilized; or where there is no broker or dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request. (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994.)

**17-23-14. Time of notification for securities transactions.** The time for mailing or otherwise furnishing the written notification described in K.A.R. 17-23-13 shall be five business days from the date of the transaction, or if a broker or dealer is utilized, within five business days from the receipt by the bank or trust company of the broker or dealer's confirmation. However, the bank or trust company may elect to use the following alternative procedures if the transaction is effected for the following types of securities. (a) For accounts, except periodic plans, for which the

bank or trust company does not exercise investment discretion, the bank or trust company and the customer may agree in writing to a different arrangement as to the time and content of the notification. The agreement shall make clear the customer's right to receive the written notification within the prescribed time period at no additional cost to the customer.

(b) For accounts, except collective investment funds, for which the bank or trust company exercises investment discretion in other than an agency capacity, the bank or trust company shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in the account, mail or otherwise furnish to the person the written notification within a reasonable time. The bank or trust company may charge that person a reasonable fee for providing this information.

(c) Unless otherwise provided in the account agreement, for accounts for which the bank or trust company exercises investment discretion in an agency capacity, the following requirements shall be met:

(1) The bank or trust company shall mail or otherwise furnish to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank or trust company at the end of that period and all debits, credits, and transactions in the customer's account during that period; and

(2) if requested by the customer, the bank or trust company shall mail or otherwise furnish to the customer within a reasonable time the written notification described in K.A.R. 17-23-13. The bank or trust company may charge a reasonable fee for providing this information.

(d) For a collective investment fund, the provisions of K.A.R. 17-23-11 shall apply.

(e)(1) For a periodic plan, the bank or trust company shall mail or otherwise furnish to the customer as promptly as possible after each transaction a written statement showing the following information:

(A) The funds and securities in the custody or possession of the bank or trust company;

(B) all service charges and commissions paid by the customer in connection with the transaction; and

(C) all other debits and credits of the customer's account involved in the transaction.



(2) Upon the written request of any customer, the bank or trust company shall furnish the information described in K.A.R. 17-23-13. However, any information relating to remuneration paid in connection with the transaction shall not be required to be provided to the customer when paid by a source other than the customer. The bank or trust company may charge a reasonable fee for providing this information. (Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601 and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

**17-23-15.** (Authorized by K.S.A. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-2103; effective Feb. 28, 1994; revoked Jan. 18, 2002.)

**17-23-16. Location of trust documents.**

(a) Unless an exception is granted by the commissioner, all of the original governing instruments establishing a fiduciary relationship with a bank or trust company shall be permanently maintained and located at one site, which shall be one of the following:

- (1) The main bank or trust company location;
- (2) an approved branch or trust service office;

or

- (3) another site approved by the commissioner.

(b) The following factors shall be considered by the commissioner in determining whether to grant an exception:

(1) The cost to the bank or trust company to maintain all original governing instruments at one site;

(2) the additional burden to the bank or trust company to maintain all original governing instruments at one site; and

(3) the effect that storage at separate locations will have on the ability of the commissioner, or the commissioner's designees, to efficiently conduct an examination of the bank or trust company.

(c) All other records shall be stored at any main bank or trust company location, an approved branch or trust service office, or another site approved by the commissioner.

(d) For purposes of examination, the bank or trust company shall make available original governing instruments and other records as deemed necessary by the commissioner to complete an examination. (Authorized by K.S.A. 9-1713 and K.S.A. 9-1130; implementing K.S.A. 9-1603, 9-1130, and K.S.A. 1999 Supp. 9-2103; effective Feb. 28, 1994; amended April 28, 2000.)

**Article 24.—MORTGAGE BUSINESS**

**17-24-1. Signed acknowledgment; contents.** Before a licensee enters into any contract for the provision of services or receives any compensation or promise of compensation for a mortgage loan, the licensee shall acquire from the customer a signed acknowledgment containing only the following items:

(a) The name and address of the mortgage business;

(b) the name and position of the individual presenting the acknowledgment to the customer for a signature;

(c) a statement in at least 10-point boldface letters that reads as follows: “(name of licensee) is a mortgage business licensed with the Kansas Office of the State Bank Commissioner in accordance with the laws of the state of Kansas. This license does not represent an endorsement or recommendation of the licensee’s products or services by the Office of the State Bank Commissioner. As a consumer, you may submit a complaint or inquiry about this mortgage business by delivering a written statement to the Office of the State Bank Commissioner, 700 Jackson, Suite 300, Topeka, Kansas 66603”; and

(d) the original signature of the customer or customers and the date on which the signature or signatures were attached. (Authorized by K.S.A. 9-2208 and 9-2209; implementing K.S.A. 9-2208; effective, T-17-4-9-99, April 9, 1999; effective July 16, 1999; amended Oct. 3, 2003.)

**17-24-2. Mortgage business fees.** At the time of filing any application, or providing any notice that requires the amendment of any license or registration pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq., and amendments thereto, each applicant, licensee, or registrant shall remit to the office of the state bank commissioner the following applicable nonrefundable fees:

- (a) Application for principal place of business ..... \$600
- (b) Renewal application for principal place of business ..... \$400
- (c) Application for branch office ..... \$200
- (d) Renewal application for branch office ..... \$200
- (e) Application for registration as loan originator..... \$75



- (f) Renewal application for registration as loan originator ..... \$50
  - (g) Amendment of any license or registration ..... \$25
- (Authorized by K.S.A. 2000 Supp. 9-2209, as amended by 2001 HB 2481, § 10; implementing K.S.A. 2000 Supp. 9-2204, 9-2205, 9-2215, as amended by 2001 HB 2481, §§ 5, 6, 15; effective, T-17-4-9-99, April 9, 1999; amended Dec. 21, 2001.)

**17-24-3. Continuing education; requirements; waiver.** (a) Each individual required to register as a loan originator pursuant to the Kansas mortgage business act, K.S.A. 9-2201 et seq. and amendments thereto, shall annually complete at least eight hours of approved continuing professional education (CPE) as a condition of registration renewal.

(b) Each CPE course shall first be approved by the office of the state bank commissioner (OSBC), or its designee, before granting CPE credit.

(c) CPE courses shall focus on issues of mortgage business, as defined by K.S.A. 9-2201 and amendments thereto, or related industry topics.

(d) One CPE hour shall consist of at least 50 minutes of approved instruction.

(e) Each request for CPE course approval shall be submitted on a form provided by the OSBC. A request for CPE course approval may be submitted by any person, as defined by K.S.A. 9-2201 and amendments thereto.

(f) Evidence of satisfactory completion of approved CPE courses shall be submitted on forms provided by the OSBC. The form may be submitted by the registrant seeking CPE credit or the entity sponsoring the CPE course. Each registrant shall be ultimately responsible for ensuring that CPE credit has been properly submitted to the OSBC and shall maintain verification records in the form of completion certificates or other documents supporting evidence of attendance at approved CPE courses.

(g) Each CPE year shall begin on the first day of October each year and shall end on the 30th day of September the following year.

(h) Continuing professional education hours shall not be carried forward from one year to the next year, except that for the CPE year beginning October 1, 2001, up to eight hours of approved CPE taken in the preceding 10 months may be carried forward for that CPE year.

(i) Each registrant issued a certificate of reg-

istration on or after the first day of July of any year shall have until the 30th day of September the following year to comply with annual CPE requirements.

(j) Each registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 9-2205 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration, unless the new certificate of registration is issued on or after the first day of July following the lapse of the prior certificate of registration.

(k) The requirement for completion of CPE may be waived, or the deadline for completion may be extended, by the OSBC under either of the following circumstances:

(1) The registrant is called to active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in any CPE year.

(2) The registrant experiences physical disability, illness, or any extenuating circumstances that prevents successful completion of CPE. (Authorized by and implementing K.S.A. 2000 Supp. 9-2209, as amended by L. 2001, Ch. 88, § 10; effective March 1, 2002.)

**17-24-4. Record retention.** (a) In any mortgage transaction in which the licensee does not close the mortgage loan in the licensee's name, the licensee shall retain the following documents for at least 25 months following the loan application date:

- (1) The application;
- (2) the good faith estimate;
- (3) the early truth-in-lending disclosure statement;
- (4) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;
- (5) all advertisements and solicitations containing the information required to be disclosed by K.S.A. 9-2208(c), and amendments thereto;
- (6) an appraisal performed by a Kansas-licensed or Kansas-certified appraiser completed within 12 months before the loan closing date, or the total appraised value of the real estate as reflected in the most recent records of the tax assessor of the county in which the real estate is located;
- (7) the settlement statement; and
- (8) all paid invoices for appraisal, title work, credit report, and any other closing costs.

(b) In any mortgage transaction in which the licensee provides any money to fund the loan or

closes the mortgage loan in the licensee's name, the licensee shall retain both the documents required in subsection (a) of this regulation and the following documents, for at least 25 months from the mortgage loan closing date:

(1) The high loan-to-value notice required by K.S.A. 16a-3-207 and amendments thereto, if applicable to the loan;

(2) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;

(3) any credit insurance requests and insurance certificates;

(4) the note and any other applicable contract addendum or rider;

(5) a copy of the filed mortgage or deed;

(6) a copy of the title policy or search;

(7) the assignment of the mortgage and note, if applicable;

(8) the initial escrow statement, if applicable;

(9) the right of the rescission notice or waiver, if applicable;

(10) the transfer of mortgage servicing disclosure, if applicable; and

(11) a complete payment history on serviced accounts, including the following:

(A) An explanation of transaction codes, if used;

(B) the principal balance;

(C) the payment amount;

(D) the payment date; and

(E) the distribution of the payment amount to the following:

(i) Interest;

(ii) principal;

(iii) late fee; and

(iv) escrow; and

(F) any other amounts that have been added to, or deducted from, a consumer's account.

(c) In addition to meeting the requirements specified in subsections (a) and (b) of this regulation, each licensee shall retain for at least the previous 25 months the documents related to the general business activities of the licensee, which shall include the following:

(1) Advertising records, including copies of printed advertisements or solicitations;

(2) the business account check ledger or register;

(3) all financial statements, balance sheets, or statements of condition;

(4) all escrow account ledgers and related deposit statements as required by K.S.A. 9-2213, and amendments thereto;

(5) all lease agreements for Kansas locations; and

(6) a schedule of the licensee's fees and charges. (Authorized by K.S.A. 9-2209; implementing K.S.A. 9-2208, 9-2213, and 9-2216; effective Oct. 31, 2003.)

#### **Article 25.—CREDIT SERVICES ORGANIZATIONS**

**17-25-1. Registration, renewal, and amendment fees.** When filing any application or renewal or providing any notice that requires the amendment of any registration or renewal pursuant to the Kansas credit services organization act, K.S.A. 50-1116 et seq. and amendments thereto, each applicant or registrant shall remit to the office of the state bank commissioner the applicable nonrefundable fee, as follows:

(a) Application for initial registration \$500

(b) Renewal application for registration \$200

(c) Amendment of any registration \$25

(Authorized by K.S.A. 50-1118 and K.S.A. 50-1128; implementing K.S.A. 50-1118; effective April 4, 2008.)